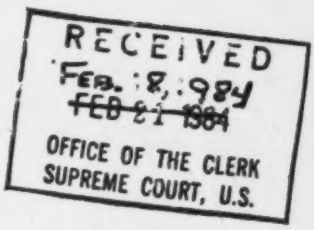
IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983



LEONARD MARVIN LAWS,)
)
Petitioner,)
)
vs.) Cause No. 83-6625
)
STATE OF MISSOURI,)
)
Respondent.)

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSOURI

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OPINION BELOW

The opinion of the Missouri Supreme Court is recorded at 661 S.W.2d 526 (Mo. banc 1983). A copy of this opinion appears in Appendix A, infra.

JURISDICTIONAL STATEMENT

The petitioner, Leonard Marvin Laws, was sentenced to death on January 6, 1984, for the offense of Capital Murder.

The judgment and sentence of the trial court affirmed in the Missouri Supreme Court on November 22, 1983. An application for rehearing was denied on December 20, 1983 (Appendix B, infra).

On January 3, 1984, this Court issued an order staying the execution of the petitioner, until such time as his appellate remedies are completed.

Petitioner filed this writ within sixty days after the entry of final judgment in this case, and invokes the Court's jurisdiction under 28 U.S.C. Section 1257 (Appendix C, infra) to review the judgment below by Writ of Certiorari.

QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER THE MISSOURI SUPREME COURT'S DECISION IN STATE v. LAWS, 661 S.W.2d 526 (Mo. banc 1983) WHEREIN THE COURT HELD THAT FILING AGGRAVATING CIRCUMSTANCES DURING TRIAL COMPLIED WITH ALL DUE PROCESS REQUIREMENTS FOR NOTICE OF THE APPLICATION OF THE DEATH PENALTY IN FACT VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTH AMENDMENT AS APPLIED TO STATE ACTIONS THROUGH THE FOURTEENTH AMDNEMENT TO THE UNITED STATES CONSTITUTION BY DENYING DEFENDANT NOTICE OF THE DEATH PENALTY AND ADEQUATE TIME TO PREPARE EVIDENCE OF MITIGATION FOR THE PENALTY PHASE OF CAPITAL MURDER LITIGATION.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution: Articles VI, VIII, and XIV. Statutory provisions: 565.008 (1) (R.S.Mo. 1978), 565.012 R.S.Mo. Supp. 1982, and 565.006 R.S.Mo. Supp. 1982. See Appendix D.

STATEMENT OF THE CASE

This petition is brought as a result of the untimely application of aggravating circumstances under Missouri's capital murder sentencing schema stated in 565.006, R.S.Mo. Supp. 1982.

In the case of this petition the Supreme Court of Missouri has issued an opinion holding that the trial court properly sentenced the defendant to death despite the lack of a properly filed notice of aggravating circumstances. State v. Gilmore 650 S.W.2d 627 (Mo. banc 1983).

On February 6, 1981, the State of Missouri issued an indictment charging Leonard Marvin Laws with two counts of capital murder. (L.F. 156). The State also filed notices of aggravation (L.F. 5) on the same day. The State subsequently discovered that the original indictment lacked the word "deliberately" (L.F. 156). Without that word the indictment did not confer jurisdiction on the State of Missouri because the crime charged did not contain the element of mens rea required by the due process clause of the fourth amendment to the United States Constitution. This Court interpreted the due process clause to prohibit prosecution for crimes without mens rea, known as strict liability statutes in Lambert v. California 355 U.S. 255, 78 S.Ct. 240, 2 L.Ed.2d 228 (1957).

Several days after the State filed the first indictment, they filed notices in aggravation (L.F. 154). These notices failed beacuse the Court had no jurisdiction to proceed on the case because of the tainted indictment. The tainted indictment caused the entire proceeding to fail not merely the indictment according to State v. Gilmore 650 S.W.2d 627 (Mo. banc 1983). The State filed an indictment containing the proper mens rea elements on February 9, 1982. (L.F. 149).

The State never refiled the notices in aggravation. Therefore the defendant did not receive notice of the death penalty segment of the litigation through the procedures set up in Section 565.012 R.S.Mo. 1978.

THE REASONS FOR GRANTING THE WRIT

Petitioner submits that a writ of certiorari should be issued because the Missouri Supreme Court's holding in State v. Laws 661 S.W.2d (Mo. banc 1983) denies the defendant due process of law as required by the fifth and fourteenth amendments to the United States Constitution.

The fifth and fourteenth amendments guarantee the rights of due process and equal protection. One of the basic tenets of the due process clause is procedural due process. The due process doctrine dictates the use of fair procedures and the uniform application of these procedures to all citizens.

The concept of equal application of the law is one of the oldest, most basic tenets of our constitutional system. In 1886 this Court reversed the conviction of Yick Wo in Yick Wo v. Hopkins 118 U.S. 356, 369 (1886) because of unequal application. The California Courts had convicted Wo of operating a laundry without a permit. The Court found that the California law required laundry permits, but the local officials would not give one to Wo. As Justice Matthews opined

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances material to their rights the denial of equal justice is still within the prohibition of the constitution."
>
> Yick Wo at 369.

Eight years later this Court applauded and enlarged the Yick Wo doctrine in McKane v. Dunston 153 U.S. 684,687-688 (1869). In McKane this Court required that the State allow all defendants to utilize the procedure for appellate review whether

they could afford to or not. As one Justice noted, the Constitution can not force a state to adopt an appellate review system, but once it has done so, it cannot apply it "in a way that discriminates against some convicted defendants..." [emphasis added].

Although the doctrine of equal application is hoary with age it is not a dead letter. Through the years Courts have continually struck down the unequal application of procedures. See also: Douglas v. California 372 U.S. 353 (1963); Rinaldi v. Geager 384 U.S. 305, 310 (1966). Recently this Court issued a series of cases whereby it held that states may not deny indigents the right of appeal merely because of their indigency. This line of cases relied on the unequal application principle. Burns v. Ohio 360 U.S. 252 (1954). This Court held that states may not require filing fees for indigent's appeals because such fees would deny indigents the procedure of appellate review for the arbitrary reason of money. Burns at 254 . See also Smith v. Bennett 365 U.S. 708 (1961). Two years later this Court shored up the Burns decision by finding that due process required indigents be provided with transcripts for their appeals free of cost or the appellate procedure again would selectively discriminate. Griffin v. Illinois 351 U.S. 12,100 L.Ed. 891 76 S.Ct. 585 (1956). In Griffin the Court strongly restated its position on unequal application when Justice Black stated:

> "Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal. This hope, at least in part, brought about in 1215 the royal concessions of Magna Charta: "To no one will we sell, to no one will we refuse, or delay, right or justice.... No free man shall be taken or imprisoned, or disseised, or outlawed, or exiled, or anywise destroyed; nor shall we go upon him

> nor send upon him, but by the lawful judgment of his peers or by the law of the land." The pledges were unquestionably steps toward a fairer and more nearly equal application of criminal justice. In this tradition, our own constitutional guaranties of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and different groups of persons. Both equal protection and due process emphasize the central aim of our entire judicial system--all people charged with crime must, so far as the law is concerned, "stand on an equality before the bar of justice in every American court." Chambers v. Florida, 309 U.S. 227, 241. See also Yick Wo v. Hopkins, 118 U.S. 356, 369.
>
> ....But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty. Appellate review has now become an integral part of the Illinois trial system for finally adjudicating the guilt or innocence of a defendant. Consequently at all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations.
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> See: Cole v. Arkansas, 333 U.S. 196, 201; Dowd v. United States ex rel. Cook, 340 U.S. 206, 208; Cochran v. Kansas, 316 U.S. 255, 257; Frank v. Mangum, 237 U.S. 309, 327.
>
> See also: Lang v. District Court 385 U.S. 192 (1966); Mayer v. Chicago 404 U.S. 189 (1971).

Seven years later the Court again used the unequal application principle to protect indigent's access to the gates of appellate review. In Douglas v. California 372 U.S. 352 (1963). This Court held that due process and equal protection guaranteed everyone, not merely the rich, the full process of appellate review. Douglas held that since the State had set up an appellate review procedure, which included the right to use attorneys, all defendants should have the use of attorneys in that system despite their poverty. Douglas at 360, 361.

Missouri has voluntarily set up a system for charging defendants with capital murder which includes the safeguard of

separate notice of the death penalty. Under Section 565.001 R.S.Mo. 1978 provides that "any person who unlawfully, willfully, knowingly, deliberately, and with premeditation kills or causes the killing of another human being is guilty of the offense of capital murder." Section 565.001 does not mandatorily impose the death penalty on defendants charged with capital murder because of the problems discussed by this Court in Furman v. Georgia 408 U.S. 238, (1972). Section 565.006 R.S.Mo. 1978 and Section 565.012 contain the procedures by which the State charges the alleged murderer with the death penalty. Section 565.006 states that:

> .."the jury or judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty, or pleas of nolo contendere of the defendant, or the absence of any such prior criminal convictions and pleas. Only such evidence in aggravation as the prosecution has made known to the defendant prior to his trial shall be admissible."
>
> §565.006(2)R.S.Mo. 1978

Section 565.012 then states what constitutes proper aggravating circumstances of which the defendant must be notified under 565.006:

> ...2. Statutory aggravating circumstances shall be limited to the following:
>
> 1) The offense was committed by a person with a prior record of conviction for capital murder, or the offense was committed by a person who has a substantial history of serious assaultive criminal convictions;
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> 2) The offense was committed while the offender was engaged in the commission of another capital murder;
>
> 3) The offender by his act of capital murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person;

4) The offender committed the offense of capital murder for himself or another, for the purpose of receiving money or any other thing of monetary value;

5) The capital murder was committed against a judicial officer, former judicial officer, prosecuting attorney or former prosecuting attorney, circuit attorney or former circuit attorney, elected official or former elected official during or because of the exercise of his official duty;

6) The offender caused or directed another to commit capital murder or committed capital murder as an agent or employee of another person;

7) The offense was outrageously or wantonly vile, horrible or inhuman in that it involved torture, or depravity of mind;

8) The capital murder was committed against any peace officer, corrections employee, or fireman while engaged in the performance of his official duty;

9) The capital murder was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement;

10) The capital murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another.

Missouri failed to follow this procedure in this case. Although the State originally charged the defendant with capital murder and filed appropriate notices in aggravation the court withdrew those notices when it reindicted the defendant. Although the State of Missouri clearly acted in order to avoid misprosecution under a faulty indictment which caused no jurisdiction to inure to the judicial system, their motive does not rectify. or even bear on the fact that the second indictment without the notice in aggravation notified the defendant and his attorney only of the charge of capital murder. At trial the prosecution introduced evidence in aggravation during the penalty phase even though they did not follow the procedures required by Missouri law. Therefore,

the State of Missouri, applied its procedures unequally to all the defendants within its purview.

The Missouri Supreme Court recognized the danger of this type of unequal application where in this co-defendants appeal it reversed the trial court and mandated a new trial because the indictment had been issued without the proper mens rea element and therefore the trial court had no jurisdiction over the proceedings at anytime. State v. Gilmore 650 S.W.2d 627 (Mo. banc 1984). When the State filed the notices in aggravation against the appellant herein named, no juristiction had inured to the Missouri Court for the same reason it had not inured in Gilmore. The indictment found improper in Gilmore is the same as that in question in this case. When the State filed the second indictment jurisdiction inured to the trial court. At no time thereafter did the State file notices in aggravation. The second filing without the accompanying statements of aggravation notified the defendant of the charge of capital murder only, not the death penalty. Since the trial judge allowed the jury to consider the aggravating circumstances despite the lack of notice required by Section 565.006(2) this Court should remand this case for new trial where full consideration can be given to both the aggravating and mitigating circumstances as due process requires.

CONCLUSION

For the reasons set forth above it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was mailed this 18th day of February, 1984, to John Ashcroft, Attorney General, Supreme Court Building, P. O. Box 899, Jefferson City, Missouri 65101.

Subscribed and sworn to this 18th day of February, 1984.

NOTARY PUBLIC

My Commission Expires:
September 20, 1987.

Appendix A

Phillips?

83-6625

Supreme Court of Missouri

en banc

STATE OF MISSOURI,
Respondent,

vs.

LEONARD MARVIN LAWS,
Appellant.

No. 64421

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY

The Honorable Richard T. Enright, Judge

A jury found the defendant guilty of two counts of capital murder and, having expressly found four statutory aggravating circumstances, assessed the death penalty. We affirm the conviction and, after exercising the statutory review mandated by § 565.014, RSMo 1978, sustain the death sentence.

The state relied on the eyewitness testimony of Norman Gilmore, who was a participant in the criminal acts charged but bargained for a 15-year sentence in return for his testimony against his brother George[1] and the defendant. Corroboration was found in admissions by George made to friends and relatives, adopted by the defendant through word and gesture. The defendant

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1 State v. Gilmore, 650 S.W.2d 627 (Mo. banc 1983) (Gilmore I), involves the same incident and includes a statement of further facts. The case was reversed and remanded because of insufficiency of the indictment.

does not challenge the sufficiency of the evidence, and so a relatively brief statement of the sordid details of the crime will suffice.

The defendant, in October of 1980, was living in a two-room house trailer along with the Gilmore brothers, George's wife, a sister of the Gilmores, and eleven children. None of the adults was employed, and the group apparently subsisted on one of the women's ADC payments and food stamps. George announced to the adults that he knew an easier way of making money than working because old people did not trust banks and kept large amounts of money in their homes where they would be easy robbery victims. He then suggested that the victims could be killed so that they could not identify the robbers.

The defendant and Norman, far from objecting, indicated willingness to participate in George's proposed enterprise. The three had made a purchase of shotguns and a rifle on October 8, 1980, and the shotguns were later sawed off. Very early in the morning of October 29 the three headed to the home of Clarence and Lottie Williams, whom the Gilmores had known through an uncle. The defendant was carrying the rifle and the brothers the shotguns. The defendant cut the telephone line, and the three then knocked on the door. The Williams first came out and were ordered back into the house, where the defendant assisted in tying them up in chairs. Defendant threatened to cut their fingers off if they did not tell where their money was concealed. They complied. The robbers then ransacked the house. The Williams were then untied and taken into the bedroom. The defendant suggested that he would hit them in the head with a baseball bat but

George told him to go outside and see whether gunshots could be heard. George then shot Lottie once and Clarence twice, killing them. The criminals carried out their loot, loading it into the defendant's and the victims' cars. They next poured oil on the floor and the defendant ignited the oil, starting a fire which substantially destroyed the house. The three then returned to the house trailer with the loot, some of which was left there and identified at trial.

At a later time it was suggested that Norman was talking too much, and the defendant said that he would have to be disposed of, "brother or no brother." George and the defendant expounded rather freely to friends and relations about what they had done, with George doing most of the talking while the defendant was present and manifesting agreement. Two of the hearers, out of fear, reported to the police and aided in setting up George and the defendant for a police ambush on January 1, 1981, and they were apprehended following a chase.

1. The Guilt Phase

When the defendant was arrested he was advised of his Miranda rights and presented with a written waiver form. He initialed the enumerated rights but did not sign the waiver. The attending officer testified that the defendant "indicated that he knew that he was going to die for what he had done but he was going to make me work for it." Objection was taken and preserved, and the defendant now argues that the officer's testimony contained an improper revelation that the defendant had elected to exercise his privilege against self-incrimination.

We do not agree with this contention. The defendant was properly alerted as to his rights regarding statements to the police and willingly made a statement strongly probative of his guilt. He knew, after the warning, that he spoke at his own risk. The statement was much more than a mere claim of privilege, and the jury should not be denied the benefit of probative evidence simply because the defendant indicated awareness of his right to remain silent.[2] The totality of the evidence against the defendant, furthermore, is very strong, with admissions and the finding of the loot providing corroboration for the testimony of the very depraved eyewitness.

The defendant, in a pro se brief, challenges the "death qualification" of the jury, pursuant to Witherspoon v. Illinois, 391 U.S. 510 (1968). It is first suggested that a jury from which all persons who affirm that they could never vote for a death sentence have been removed is "prosecution prone," and

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[2] Affirmative and voluntary admissions to crimes have been held admissible in a number of cases, in both Missouri and other jurisdictions, presenting essentially identical facts. See, e.g., United States v. Valle, 644 F.2d 374 (8th Cir. 1981) (Statement made by defendant to Secret Service agent while he was incarcerated and fully advised of his Miranda rights was voluntary and, statement was properly admitted at his trial); State v. Stewart, 542 S.W.2d 533 (Mo. App. 1976) (Admission against interest voluntarily made by defendant while under arrest for possession of marihuana and after he had been advised of his rights was properly admissible); State v. Finn, 111 Ariz. 271, 528 P.2d 615 (banc 1974) (Admission into evidence of defendant's response to officer's question, did not contravene defendant's Fifth Amendment right to remain silent, where he was informed of his Miranda rights and there was no evidence of duress); Antone v. State, 382 So.2d 1205 (Fla. 1980), cert. denied, 449 U.S. 913 (1980) (Defendant's voluntary statements made after the administration of Miranda warnings were voluntary and admissible); State v. Stilling, 285 Or. 293, 590 P.2d 1223 (1979) (Testimony by a detective was not an improper use of defendant's assertion of his Fifth Amendment privilege to remain silent, since testimony was not used to show defendant's refusal to talk but rather to show what he admitted).

incapable of rendering a proper verdict on any phase of the case. This contention has been expressly rejected. State v. Stokes, 638 S.W.2d 715, 722 (Mo. banc 1982), cert. denied, 103 S.Ct. 1263 (1983); State v. Mercer, 618 S.W.2d 1, 8 (Mo. banc 1981), cert. denied, 454 U.S. 933 (1981).

The defendant also argues that venireman Barfield was improperly excused for cause, suggesting that he said that he could consider death in "some of the very worst [cases] in our history." His actual answer was that he could not consider the death sentence. This answer was sufficient for excuse for cause, especially in the absence of an express objection.[3] See State v. Battle, ____ S.W.2d ____ (Mo. banc 1983) (No. 63436, _____, 1983).

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[3] Venireman Barfield was properly excused for cause because of the following responses made on voir dire examination by the State:

> Mr. Goldman: ... do you have some feelings you think would prevent you from returning a death verdict?
>
> Venireman 17: Religious belief.
>
> Mr. Goldman: ... And is what you are telling me, sir, that regardless of what the evidence might be in the case you still have this religious belief that would not let you vote for the death penalty?
>
> Venireman 17: That's correct.
>
> Mr. Goldman: ... So if you had a choice of those two options, death or life without parole for fifty years, you are saying you would never vote for the death penalty?
>
> Venireman 17: No.

The trial judge apparently construed the last answer as intending to say, "No, I would never vote for the death penalty," rather than as denying the prosecutor's assertion that he would not do so. This is an appropriate construction, in a situation in which manner of expression would be significant, and is all the more so because defense counsel did not seek clarification, nor object to the excuse of the juror.

The defendant next complains of the giving of MAI-CR2d 3.52 at the conclusion of the evidence, as a part of the Court's general charge.[4] Norman Gilmore was the only witness who was impeached by prior inconsistent statements. He testified at trial that the plan from its inception contemplated the killing of the victims so that they would not identify the criminals, and the defense showed that, when his guilty plea was received, he indicated that the killings had been an afterthought. The impeaching testimony went in without objection or request for limiting instruction. The defendant now argues that it became available as evidence in the case for all purposes, and that the giving of 3.52 deprived the defendant of the right to have the inconsistent statements considered as substantive evidence.

The Attorney General represents that the instruction was requested by defense counsel, but the record does not show this. Counsel, of course, are responsible for seeing that the trial proceedings are recorded accurately, and that the instructions show which side requested them. In the absence of an appropriate record we can only assume that the court gave the instruction on

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[4] The trial court gave MAI-CR2d 3.52 (1979) at the conclusion of the evidence as part of its general charge, as follows:

> If you find and believe from the evidence that on some former occasion a witness made a statement inconsistent with his or her testimony in this case, you may consider such evidence for the purpose of deciding the believability of the witness and the weight to be given to his or her testimony. However, in deciding the guilt or innocence of the defendant, any prior statement of the witness must not be considered by you as evidence of the matters contained in the statement.

its own motion. So considered, we perceive no error and no prejudice.

We are not prepared to accept the proposition that the court erred in giving the limiting instruction at a later time, simply because it was not requested or given at the time the impeaching evidence was offered. The limitation was as logical at the conclusion of the case as at any other time.[5] The court might well have refused a belated request, but should not be held in error for giving a correct instruction. The defendant did not acquire a right to have the evidence considered beyond its proper purpose simply because there had been no contemporaneous attempt at limitation.

There is, furthermore, no discernable prejudice from the giving of the instruction. The defendant had no burden of establishing any fact. The prosecution, rather, had to persuade the jury that Norman's testimony was worthy of belief. If the jury chose to disbelieve or discredit Norman because he had said something different on a previous occasion, then the showing of the inconsistent statement would have had its effect, whether considered as impeaching evidence or substantive evidence. The jury apparently accepted Norman's trial testimony. It strains the imagination to think that its view would have been different if 3.52 had not been given.

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[5] Federal Rule of Evidence 801(d) (1) refers to the use of prior inconsistent statements for impeachment purposes. The Advisory Committee notes to the rule recognize that "prior inconsistent statements traditionally have been admissible to impeach but not as substantive evidence." Missouri law is still in accord with this traditional approach.

The defendant next argues that the jury should have been instructed on "conspiracy to commit murder" as a lesser included offense. The point is not well taken. An offense is not lesser and included if it contains any element which is not a part of the greater offense. An essential element of conspiracy is agreement.[6] Agreement is no part of the substantive offense of capital murder, even when the offense is committed by several persons in collaboration. An instruction on conspiracy, far from being required, would have been absolutely improper because it would have permitted the conviction of the defendant for an offense not charged.

The next complaint has to do with the prosecutor's argument about "instructing down," in which he said:

> Because [the court] instructs down does not mean that he believes this any more than the other ones. ...

Objection was promptly made, and the court responded as follows:

> "Well, I will sustain the objection to the way you phrased that, what the court may or may not believe, and instruct the jury to disregard that portion."

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[6] Section 564.016, RSMo 1978, provides the following definition of conspiracy:

> 1. A person is guilty of conspiracy with another person or persons to commit an offense if, with the purpose of promoting or facilitating its commission he agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such offense. (Emphasis supplied).

There was no motion for mistrial. The court granted the only relief asked for. The remark, furthermore, was not of such consequence as to impede the jury's proper consideration of the case.

Other complaints are made about the closing arguments, at both phases of the trial. No objections were taken to these. They are not of sufficient gravity to support a claim of plain error, or as to impose on the court a duty of intervening in the absence of objection. State v. Newlon, 627 S.W.2d 606 (Mo. banc 1982), cert. denied, 103 S.Ct. 185 (1982).

The first phase of the trial was free of any substantial or prejudicial error, and the conviction on each count is affirmed.

2. The Punishment Phase

The defendant claims that there was no jurisdictional foundation for the second stage of the trial or for the admission of evidence in aggravation, because no notice of aggravating circumstances pursuant to § 565.006(2), RSMo Cum. Supp. 1982, was filed after the filing of the information on which the case was tried. An appropriate notice, and amended notice, were filed after the return of the initial indictment, but this indictment was invalid because it omitted the element of deliberation. See State v. Gilmore, supra, note 1. Defendant argues that this notice was a nullity because of the invalidity of the indictment.

We reject the claim. The purpose of the notice of aggravating circumstances is just what the title implies -- to give notice. Defense counsel, by moving to strike the notice which was filed, show that they were aware of the claimed aggravating

circumstances. Had objection been made about the time of filing a new identical notice could have been filed. The requirement of notice is purely statutory. We see no reason for holding that the time of giving notice is jurisdictional.

Counsel eloquently argues that we should depart from prior holdings such as State v. Newlon, supra, and should hold that the imposition of capital punishment constitutes cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 21 of the Constitution of Missouri. It is argued that the "standard-less discretion" which caused the Supreme Court of the United States to invalidate all or substantially all of the existing death penalty statutes in Furman v. Georgia, 408 U.S. 238 (1972), still remains, in spite of the attempt in Gregg v. Georgia, 428 U.S. 153 (1976), and companion cases, to indicate the kind of standards the Supreme Court might be willing to accept. This Court is not willing to depart from its prior holdings, or to invalidate the statute which was borrowed in its essentials from Georgia and which appears to comply with the Gregg requirements.[7]

The defense next argues that the death sentence in this case is constitutionally invalid because of the 15-year sentence imposed on Norman Gilmore following his undertaking to testify for the state. Counsel argues that Norman's culpability was substantially greater than defendant's, and comparable to that of

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[7] The writer is not lacking in sympathy for the argument presented, but follows the recent and substantially unanimous decisions of this Court.

George. It is common prosecutorial practice to enter into a bargain with a criminal in exchange for testimony against other accused persons.[8] There is no requirement that the bargain be offered only to a person who appears to be less blameworthy than the persons against whom he proposes to testify. Norman was the only one of the three robbers who came forward with an offer of testimony in exchange for lenient treatment. He was the only eyewitness who testified. Had he remained silent, there might have been no conviction at all for a shocking crime, or the juries might have compromised their findings on account of uncertainties. There is no basis for criticizing the discretion the prosecutor exercised in this case, or for holding that, by bargaining with Norman, the state lost the right to try the defendant and George for capital murder.

We now turn to the independent review the sentence mandated by § 565.014, RSMo 1978.

The defendant had a fair trial, free from prejudicial error, as our holdings on the several points urged for reversal show. None of the prosecution's unobjected arguments during the penalty phase is of sufficient inflamatory tendency to indicate that the verdicts were reached as the result of passion and prejudice, and nothing else indicates that they were so flawed.

At least three statutory aggravating circumstances as defined in § 565.012, RSMo Cum. Supp. 1982, and found by the jury were soundly established by the evidence, as follows:

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8 Gregg v. Georgia, 428 U.S. 153, 199-200 (1976), takes note of this practice and states that it is not an obstacle to capital punishment.

(1) "The defendant has a substantial history of serious assaultive convictions." (Sec. 565.012.2(1)). These include two convictions of armed robbery on pleas of guilty in Arizona in 1971, a conviction for aggravated assault in Mississippi in 1974, and two convictions for capital murder in Missouri in 1981 and 1982.[9]

(2) "The murder of each victim was committed while the defendant was engaged in the commission of the capital murder of the other victim." (Sec. 565.012.2(2). This portion of the statute is so worded that there might be some confusion as to "which came first" in another setting, but here the evidence shows overwhelmingly that the robbers, when planning the crime against the Williams, intended to kill both of them from the outset, and it can accurately be said that each murder was committed in the course of committing the other.

(3) "The defendant murdered both Lottie and Clarence Williams for the purpose of receiving money or any other thing of monetary value." (Sec. 565.012.2(4)). The sole purpose of the invasion

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9 Compare Arnold v. State, 236 Ga. 534, 224 S.E.2d 386 (1976), where the Georgia Supreme Court declared unconstitutional the aggravating circumstance of "the offense of murder ... was committed by a person ... who has a substantial history of serious assaultive criminal convictions." Ga. Code Ann. § 27-2534.1 (b)(1). The court determined that this aggravating circumstance was too vague to be constitutional.

This Court, however, has upheld a conviction where "serious assaultive criminal convictions" was the aggravating circumstance. See State v. Stokes, 638 S.W.2d 715 (Mo. banc 1982), cert. denied, 103 S.Ct. 1263 (1983). See also State v. Holton, 197 Neb. 544, 250 N.W.2d 876 (1977), cert. denied, 434 U.S. 912 (1977), where language in the Nebraska capital murder statute very similar to that discussed in Arnold was held to be constitutionally valid, and concurring opinion of Higgins, J., in Stokes.

of the Williams residence was monetary gain. The killings were simply designed to facilitate the enjoyment of the stolen money and property. Our decisions hold that deliberate homicide in the course of a robbery is a killing for the purpose of "receiving" value within the meaning of the statutory subsection. State v. McDonald, _____ S.W.2d ___ (Mo. banc 1983) (No. 64057, _____, 1983);[10] State v. Stokes, 638 S.W.2d 715 (Mo. banc 1982), cert. denied, 103 S.Ct. 1263 (1983).

Inasmuch as these three statutory aggravating circumstances were amply supported by the evidence, we need not decide whether the "outrageously or wantonly vile" aggravating circumstance defined in § 565.012(4) was proper under the evidence in this case, or whether it was submitted in accordance with the standards of Godfrey v. Georgia, 446 U.S. 420 (1980). Our cases hold that there is no prejudicial error in submitting an aggravating circumstance to the jury even though the circumstance is not sufficiently defined to provide appropriate guidance, or is not supported by the evidence, if other properly supported circumstances are found.[11] This Court rejects attempts to draw an analogy to "overinstructing" in civil cases, and the suggestion that the jury might not have specified a death sentence if it had not been instructed that it should consider an improperly assigned

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[10] The writer does not agree on this point, as explained in his Dissenting Opinion in State v. McDonald, supra, but here follows the Court's opinion in McDonald.

[11] State v. LaRette, 648 S.W.2d 96, 102 (Mo. banc 1983); State v. Mercer, 618 S.W.2d 1 (Mo. banc 1981).

aggravating circumstance. The Supreme Court of the United States has sustained convictions which present the same problems.[12]

If we are to have capital punishment, there is nothing concerning this offender or his crime which presents any reason for mitigation. The defendant and his companions willfully took the lives of an elderly couple, so as to avoid detection and be better enabled to enjoy the fruits of the robbery after fencing the stolen property. Nothing indicates that the defendant was under any psychological constraints or that he was particularly subject to the control of others.[13] Cf. State v. McIlvoy, 629 S.W.2d 333 (Mo. banc 1982). The jury's conclusion that the killings were contemplated from the inception of the plan is overwhelmingly supported by the evidence. The defendant was a willing participant from the beginning and played his assigned role by cutting the telephone line, tying the victims, threatening them, serving as lookout during the shootings, and torching the dwelling. Testimony about his expression shows no indication of regret, compassion or remorse, at least while he was free. It is of no significance that he did not fire the fatal shots.[14]

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12 See, e.g., Zant v. Stephens, ____ U.S. _____, 103 S.Ct. 2733 (1983), where the Court held that respondent's death sentence was not impaired on the asserted ground that the jury instruction with regard to the invalid statutory aggravating circumstance may have unduly affected the jury's deliberations.

13 The defendant offered no evidence at either stage of the trial.

14 Enmund v. Florida, ____ U.S. ____, 102 S.Ct. 3368 (1982), suggests that punishment ought to be proportionate to moral guilt, and set aside the conviction of a participant who was not the triggerman. In Enmund, however, there was an absence of proof that the defendant killed, attempted to kill, or intended to kill.

As for the required comparison, little can be added to the discussion in State v. Gilmore, ___ S.W.2d ____ (Mo. banc 1983) (No. 64024) (Gilmore II), decided contemporaneously, and the cases there cited.

The judgment is affirmed.

CHARLES B. BLACKMAR, Judge

All concur.

Execution date set for
January 6, 1984.

APPENDIX B

CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
65102

THOMAS F. SIMON
CLERK

TELEPHONE
(314) 751-4144

December 20, 1983

Mr. Robert C. Babione
10 North Tucker Blvd.
9 Mezz.
St. Louis, MO 63101

Thomas Henry Battle

In re: State of Missouri vs. Leonard Marvin Laws
No. 64421

Dear Mr. Babione:

This is to advise that the Court this day entered the following order in the above-entitled cause:

App.'s motion for rehearing overruled.

Very truly yours,

Thomas F. Simon
Clerk

cc: Attorney General

RECEIVED DEC 2 1 1983

721-6040

Smith Allen — extension.

APPENDIX C

Section 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against is validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

APPENDIX D

AMENDMENTS TO THE UNITED STATES CONSTITUTION

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, when district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

ARTICLE XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law shich shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of

such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any state, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATUTORY PROVISIONS

565.008 (1) (R.S.Mo. 1978)

Persons convicted of the offense of capital murder shall, if the judge or jury so recommends after complying with the provisions of sections 565.006 and 565.012, be punished by death. If the judge or jury does not recommend the imposition of the death penalty on a finding of guilty of capital murder, the convicted person shall be punished by imprisonment by the division of corrections during his natural life and shall not be eligible for probation or parole until he has served a minimum of fifty years of his sentence.

565.006 R.S.Mo. Supp. 1982

1. At the conclusion of all trials upon an indictment or information for capital murder heard by a jury, and after argument of counsel and proper charge from the court, the jury shall retire to consider a verdict of guilty or not guilty without any consideration of punishment. In nonjury capital murder cases, the court shall likewise first consider a finding of guilty or not guilty without any consideration of punishment. In each jury capital murder case, the court shall not give instructions on any lesser included offense which could not be supported by the evidence presented in the case.

2. Where the jury or judge returns a verdict or finding of guilty as provided in subsection 1 of this section, the court shall resume the trial and conduct a presentence hearing before the jury or judge, at which time the only issue shall be the determination of the punishment to be imposed. In

such hearing, subject to the laws of evidence, the jury or judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty, or pleas of nolo contendere of the defendant, or the absence of any such prior criminal convictions and pleas. Only such evidence in aggravation as the prosecution has made known to the defendant prior to his trial shall be admissible. The jury or judge shall also hear argument by the defendant or his counsel and the prosecuting attorney regarding the punishment to be imposed. The prosecuting attorney shall open and the defendant shall conclude the argument to the jury or judge. Upon conclusion of the evidence and arguments, the judge shall give the jury approrpiate instructions, and the jury shall retire to determine the punishment to be imposed. In capital murder cases in which the death penalty may be imposed by a jury or judge sitting without a jury, the additional procedure provided in section 565.012 shall be followed. The jury, or the judge in cases tried by a judge, shall fix a sentence within the limits prescribed by law. The judge shall impose the sentence fixed by the jury or judge. If the jury cannot, within a reasonable time, agree to the punishment, the judge shall impose sentence within the limits of the law; except that, the judge shall in no instance impose the death penalty when, in cases tried by a jury, the jury cannot agree upon the punishment.

3. If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment.

565.012 R.S.Mo. Supp. 1982

1. In all cases of capital murder for which the death penalty is authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider:

(1) Any of the statutory aggravating circumstances enumerated in subsection 2 which may be supported by the evidence;

(2) Any of the statutory mitigating circumstance enumerated in subsection 3 which may be supported by the evidence;

(3) Any mitigating or aggravating circumstances otherwise authorized by law; and

(4) Whether a sufficient aggravating circumstance or circumstances exist to warrant the imposition of death or whether a sufficient mitigating circumstance or circumstances exist which outweigh the aggravating circumstance or circumstances found to exist.

2. Statutory aggravating circumstances shall be limited to the following:

(1) The offense was committed by a person with a prior record of conviction for capital murder, or the offense was committed by a person who has a substantial history of serious assaultive criminal convictions;

(2) The offense was committed while the offender was engaged in the commission of another capital murder;

(3) The offender by his act of capital murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(4) The offender committed the offense of capital murder for himself or another, for the purpose of receiving money or any other thing of monetary value;

(5) The capital murder was committed against a judicial officer, former judicial officer, prosecuting attorney or former prosecuting attorney, circuit attorney or former circuit attorney, elected official or former elected official during or because of the exercise of his official duty;

(6) The offender caused or directed another to commit capital murder or committed capital murder as an agent or employee of another person;

(7) The offense was outrageously or wantonly vile, horrible or inhuman in that it involved torture, or depravity of mind;

(8) The capital murder was committed against any peace officer, corrections employee, or fireman while engaged in the performance of his official duty;

(9) The capital murder was committed by a person in, or who has escaped from, the lawful confinement;

(10) The capital murder was committed for the prupose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another;

(11) The capital murder was committed while the defendant was engaged in the perpetration or in the attempt to perpetrate the felony of rape or forcible rape or the felony of sodomy or forcible sodomy;

(12) The capital murder was committed by the defendant for the purpose of preventing the person killed from testifying in any judicial proceeding.

3. Statutory mitigating circumstances shall include the following:

(1) The defendant has no significant history of prior criminal activity;

(2) The capital felony was committed while the defendant was under the influence of extreme mental or emotional distrubance;

(3) The victim was a participant in the defendant's conduct or consented to the act;

(4) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor;

(5) The defendant acted under extreme duress or under the substantial domination of another person;

(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired;

(7) The age of the defendant at the time of the crime.

4. The statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt.

5. Unless at least one of the statutory aggravating circumstances enumerated in this section is so found, the death penalty shall not be imposed.

INDEX TO APPENDIX E

PRESERVATION OF QUESTIONS PRESENTED

Questions Presented #1

1. Indictment omitting deliberation element. L.F. 156-161.

2. Notice of Evidence in Aggravation. L.F. 5.

3. Further Notice of Evidence in Aggravation. L.F. 153, 154
   September 4, 1981.

4. Indictment. L.F. 4, 150-151.
   Filed-February 9, 1982.

6. Transcript of evidence offered in aggravation. T. 792-794.

7. Transcript of objections to notice of aggravation. T. 786-788.

8. Defendant's Motion to Quash Indictment. L.F. 3, 114-116.

R.R. #1, Box 227 R
Mineral Point, Mo. 63660
DEFENDANT

AGE: 31
HT. 5'9"
WT. 140 158

CIRCUIT CT.
BY

HARGE: CAPITAL MURDER - CLASS A FELONY (TWO COUNTS) 565.001

OMPLAINANT:

ATE WARRANT ISSUED:

ITNESSES:

(AS ENDORSED PREVIOUSLY IN CIR. CT #450816)

State of Missouri
County of St. Louis } SS

INDICTMENT

COUNT I:

The Grand Jurors of the County of St. Louis, State of Missouri, charges that the defendant ~~in violation of Section~~ acting with another,

in violation of Section 565.001, R.S. Mo., committed the class A felony of capital murder, punishable upon conviction under Section 565.008.1, R.S. Mo., in that, on or about October 29, 1980, before the hour of 6:00 A.M., at 1650 Melrose, Glencoe, in the County of St. Louis, State of Missouri, the defendant wilfully, unlawfully, knowingly, deliberately and with premeditation aided another to cause the death of Lottie Williams by shooting her on or about October 29, 1980, in the County of St. Louis, State of Missouri, thereby causing her to die on or about October 29, 1980, in the County of St. Louis, State of Missouri, and either before or during the commission of such offense, with the purpose of promoting such offense, the defendant aided and agreed to aid in planning and committing such offense.

DUPLICITIOUS ?

A TRUE BILL
Foreman

NO TRUE BILL
Foreman

Pros. Atty.

January Term, 19 82 As a condition of release, bond is set at

Circuit Judge, St. Louis County

DEFENDANT WT. ~~140 lbs.~~

CHARGE: CAPITAL MURDER - CLASS A FELONY (TWO COUNTS) 565.001

COMPLAINANT:

DATE WARRANT ISSUED:

WITNESSES:

(AS ENDORSED PREVIOUSLY IN CIR. #450816)

State of Missouri
County of St. Louis } SS

INDICTMENT

COUNT II:

The Grand Jurors of the County of St. Louis, State of Missouri, charges that the defendant ~~in violation of Section~~ acting with another,

in violation of Section 565.001, R.S. Mo., committed the class A felony of capital murder, punishable upon conviction under Section 565.008.1, R.S. Mo., in that, on or about October 29, 1980, before the hour of 6:00 A.M., at 1650 Melrose, Glencoe, in the County of St. Louis, State of Missouri, the defendant wilfully, unlawfully, knowingly, deliberately and with premeditation aided another to cause the death of Clarence Williams by shooting him on or about October 29, 1980, in the County of St. Louis, State of Missouri, thereby causing him to die on or about October 29, 1980, in the County of St. Louis, State of Missouri, and either before or during the commission of such offense, with the purpose of promoting such offense, the defendant aided and agreed to aid in planning and committing such offense.

A TRUE BILL

Foreman

NO TRUE BILL

Foreman

Pros. Atty.

January Term, 19 82 As a condition of release, bond is set at $ 10,000.

Circuit Judge, St. Louis County

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI, Plaintiff, vs. LEONARD MARVIN LAWS, Defendant.	Cause No. 450816 Division No. 16

FILED
DIV. 5-13-81
RAYMOND V. CLIFFORD
CIRCUIT CLERK, ST. LOUIS COUNTY

NOTICE OF EVIDENCE IN AGGRAVATION

Pursuant to §565.006(2) V.A.M.S., the State, by the below signed Assistant Prosecuting Attorney, hereby makes notice of its intention to present to the jury in any hearing upon the issue of punishment evidence of the following aggravating circumstances:

1. The offense was committed while the offender was engaged in the commission of another capital murder;

2. The offender committed the offense of capital murder for himself or another, for the purpose of receiving money or any other thing of monetary value;

3. The offense was outrageously or wantonly vile, horrible or inhuman in that it involved torture, or depravity of mind;

4. The capital murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another.

5. The offense was committed by a person who has a substantial history of serious assaultive criminal convictions, to-wit Leonard Marvin Laws was convicted of two charges of armed robbery in the Superior Court of the County of Pima, State of Arizona, and sentenced to not less than five nor more than six years on November 4, 1971; Leonard Marvin Laws was convicted of aggravated assault in the Circuit Court of Hinds County, Mississippi, and sentenced to eleven years on November 28, 1974.

) ss.
COUNTY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI, Plaintiff, vs. LEONARD MARVIN LAWS, Defendant.	)	Cause No. 450816 Division No. 14 9.28

FURTHER NOTICE OF EVIDENCE IN AGGRAVATION

Pursuant to Section 565.006(2), R.S.Mo., the State hereby makes notice of its intention to present to the jury in any hearing upon the issue of punishment further evidence of aggravating circumstances otherwise authorized by law as follows:

1. Evidence that the defendant acted with others to commit the other capital murder(s) presently charged in St. Louis County, Missouri, against defendant;

2. Evidence that defendant acted with others to commit the offense of capital murder presently charged against defendant in Washington County, Missouri.

The evidence to be presented in proof of the above charges shall be the testimony of Norman Gilmore, Donna Declue, Linda Gilmore, Robert Gilmore and Bob Declue. Also any evidence of a conviction of any offense mentioned above shall be presented at the sentencing stage herein.

Respectfully submitted,

Steven H. Goldman
Assistant Prosecuting Attorney
St. Louis County, Missouri

Copy of the foregoing
mailed to Attorney for
Defendant, Timothy Devereux,
this 2 day of September, 1981.

153

COUNTY OF ST. LOUIS
82 FEB 22 AM

RAYMOND V. [illegible]
CIRCUIT CLERK

BY _____

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

JANUARY Term, 19

STATE OF MISSOURI, Plaintiff
vs.

CHARGE:

CAPITAL MURDER - CLASS A FELONY
(TWO COUNTS) (565.001)

AND A DANGEROUS OFFENDER (558.016.4)

AND A PERSISTENT OFFENDER (558.016.3

LEONARD MARVIN LAWS, Defendant

COUNT I:

Steven H. Goldman, Assistant Prosecuting Attorney, in and for the County of St. Louis, on behalf of State of Missouri, upon official oath informs the Court as follows:

That LEONARD MARVIN LAWS

in the County of St. Louis, State of Missouri, acting with another, in violation of §565.001, RSMo, committed the class A felony of capital murder, punishable upon conviction under §565.008.1, RSMo, in that, on or about October 29, 1980, before the hour of 6:00 a.m., at 1650 Melrose, Glencoe, in the County of St. Louis, State of Missouri, the defendant wilfully, unlawfully, knowing deliberately and with premeditation aided another to cause the death of Lottie Williams by shooting her on or about October 29, 1980, in the County of St. Louis, State of Missouri, thereby causing her to die on or about October 29, 1980, in the County of St. Louis, State of Missouri, and either before or during the commission of such offense, with the purpose of promoting such offense, the defendant aided and agreed to aid in planning and committing such offense.

COUNT II:

Steven H. Goldman, Assistant Prosecuting Attorney, in and for the County of St. Louis, on behalf of the State of Missouri, upon official oath informs the Court as follows:

That LEONARD MARVIN LAWS in the County of St. Louis, State of Missou acting with another, in violation of §565.001, RSMo, committed the class A felony of capital murder, punishable upon conviction under §565.008.1, RSMo, in that, on or about October 29, 1980, before the hour of 6:00 a.m., at 1650 Melrose, Glencoe, in the County of St. Louis, Stat of Missouri, the defendant wilfully, unlawfully, knowingly, deliberately and with premeditation aided another to cause the death of Clarence Williams by shooting him on or about October 29, 1980, in the County of St. Louis, State of Missouri, thereby causing him to die on or about October 29, 1980, in the County of St. Louis, State of Missouri, and either before or during the commission of such offense, with the purpose of promoting such offense, the defendant aided and agreed to aid in planning and committing such offense.

Defendant is a dangerous offender, as defined in §558.016.4, RSMo, and punishable by sentence to an extended term of imprisonment under §557.036.2(2), 557.036.4 and 558.016.6, RSMo, in that during the commission of the felony of capital murder referred to in the next two above paragraphs, the defendant knowingly murdered Lottie and Clarence Williams, and defendant has previously pleaded guilty to a dangerous felony as follows: On November 25, 1974 the defendant pleaded guilty to the felony of Aggravated Assault in the Circuit Court of the First Judicial District of Hinds County, Mississippi, and such felony was a dangerous felony as defined in §556.061(8), RSMo.

Defendant is a persistent offender, as defined in §558.016.3, RSMo and punishable by sentence to an extended term of imprisonment under §557.036.2(2), 557.036.4 and 558.016.6, RSMo, in that he has been previously convicted of three felonies committed at different times and no related to the instant cirme ar a single criminal episode, said previou convictions being as follows:

1. On November 25, 1974 the defendant was convicted of the felon

(CONTINUED ON REVERSE)

[redacted] Mineral

CHARGE: CT. I: CAPITAL MURDER - CLASS A FELONY — Rev. Mo. Stat.
CT. II: MURDER: FIRST DEGREE IN ROBBERY--CLASS A FELONY — 565.001
AFFIANT: CT. III: MURDER: FIRST DEGREE IN ARSON--CLASS A FELONY — 565.003
CT. IV: CAPITAL MURDER - CLASS A FELONY
DATE WARRANT ISSUED: CT. V: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY — P.D.:
CT. VI: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY

WITNESSES:

Det. Tom Deakin #1322
Sgt. John McCrady #415
Det. Steve Burris #942
Det. Frank Savetz #1176
St. Louis County P.D.

156816

81 FEB -6 PM 1:49

State of Missouri
County of St. Louis } SS COUNT I: INDICTMENT

The Grand Jurors for the State of Missouri, now here in Court, duly empaneled, sworn and charged to inquire within and for the body of the County of St. Louis, and State aforesaid, upon their oath present and charge that in the County of St. Louis and State of Missouri, on or about the [redacted] day of [redacted], 19[redacted], the defendant(s) did wilfully, unlawfully and feloniously ACTING WITH ANOTHER,

in violation of Section 565.001, R.S. Mo., committed the class A felony of capital murder, punishable upon conviction under Section 565.008.1, R.S. Mo., in that, on or about October 29, 1980, before the hour of 6:00 A.M., at 1650 Melrose, Glencoe, in the County of St. Louis, State of Missouri, the defendant acting with another, unlawfully, knowingly, with (premeditation) caused the death of Lottie Williams by shooting him on or about October 29, 1980, in the County of St. Louis, State of Missouri, thereby causing him to die on or about October 29, 1980, in the County of St. Louis, State of Missouri.

deliberately

156816

(PAGE ONE OF SIX)

contrary to Missouri Revised Statutes in such case made and provided, against the peace and dignity, of the State.

A TRUE BILL

Foreman

NO TRUE BILL

Foreman

Pros. Atty.

No. _____ JANUARY Term, 19 81 Bail

[redacted]

MARGE: CT. I: CAPITAL MURDER - CLASS A FELONY — Rev. Mo. Stat.
CT. II: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY — 565.001
FFIANT: CT. III: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY — 565.003
CT. IV: CAPITAL MURDER - CLASS A FELONY
CT. V: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY
ATE WARRANT ISSUED: CT. VI: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY

VITNESSES:

Det. Tom Deakin #1322
Sgt. John McCrady #415
Det. Steve Burris #942
Det. Frank Savetz #1176
St. Louis County P.D.

150816

81 FEB -6 PM 1:49

COUNT II: IN THE ALTERNATIVE TO COUNT I:

State of Missouri
County of St. Louis } SS COUNT II: INDICTMENT

The Grand Jurors for the State of Missouri, now here in Court, duly empaneled, sworn and charged to inquire within and for the body of the County of St. Louis, and State aforesaid, upon their oath present and charge that in the County of St. Louis and State of Missouri, ~~on or about the XXXXXXXXX day of XXXXXXXXXXXXXXXXXX 19XXXXX~~ the defendant(s) ~~did wilfully unlawfully and feloniously~~ ACTING WITH ANOTHER,

in violation of Section 565.003, R.S. Mo., committed the class A felony of murder in the first degree, punishable upon conviction under Section 565.008.2, R.S. Mo., in that, on or about October 29, 1980, before the hour of 6:00 A.M., at 1650 Melrose, Glencoe, in th County of St. Louis, State of Missouri, the defendant acting with anoth unlawfully caused the death of Clarence Williams, by shooting him on or about October 29, 1980, in the County of St. Louis, State of Missouri, thereby causing him to die on or about October 29, 1980, in the County of St. Louis, State of Missouri, and such killing was committed in the perpetration of the felony of robbery on or about October 29, 1980, in violation of Section 569.030, R.S. Mo., when defendant acting with another forcibly stole a shotgun, from Clarence Williams, which said property was in the possession or charge of Clarence and Lottie Williams.

1508

contrary to Missouri Revised Statutes in such case made and provided, against the peace and dignity, of the State.

A TRUE BILL — NO TRUE BILL

Foreman — Foreman — Pros. Atty.

No. _____ JANUARY Term, 19 81 Bail None.

[redacted]

565.001
565.003

CT. I: CAPITAL MURDER - CLASS A FELONY.
CT. II: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY
CT. III: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY
CT. IV: CAPITAL MURDER - CLASS A FELONY
CT. V: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY
CT. VI: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY

WITNESSES:

Det. Tom Deakin #1322
Sgt. John McCrady #415
Det. Steve Burris #942
Det. Frank Savetz #1176
St. Louis County P.D.

150816

81 FEB -6 P1:34

COUNT III: IN THE ALTERNATIVE TO COUNT'S I & II:

State of Missouri
County of St. Louis } SS COUNT III: INDICTMENT

The Grand Jurors for the State of Missouri, now here in Court, duly empaneled, sworn and charged to inquire within and for the body of the County of St. Louis, and State aforesaid, upon their oath present and charge that in the County of St. Louis and State of Missouri, on or about the [redacted] day of [redacted], 19[redacted], the defendant(s) did wilfully, unlawfully and feloniously ACTING WITH ANOTHER,

in violation of Section 565.003, R.S. Mo., committed the class A felony of murder in the first degree, punishable upon conviction under Section 565.008.2, R.S. Mo., in that, on or about October 29, 1980, before the hour of 6:00 A.M., at 1650 Melrose, Glencoe, in the County of St. Louis, State of Missouri, the defendant acting with another, unlawfully caused the death of Clarence Williams, by shooting him on or about October 29, 1980, in the County of St. Louis, State of Missouri, thereby causing him to die on or about October 29, 1980, in the County of St. Louis, State of Missouri, and such killing was committed in the perpetration of the felony of arson on or about October 29, 1980, in violation of Section 569.050, R.S. Mo., when defendant acting with another knowingly damaged an inhabitable structure located at 1650 Melrose, Glencoe, in the County of St. Louis, State of Missouri.

150816

contrary to Missouri Revised Statutes in such case made and provided, against the peace and dignity, of the State.

A TRUE BILL

Foreman

NO TRUE BILL

Foreman

Pros. Atty.

No. _____ JANUARY Term, 19 81 Bail N.B.

HARGE: CT. II: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY 565.001
CT. III: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY 565.003
FFIANT CT. IV: CAPITAL MURDER - CLASS A FELONY
CT. V: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY
CT. VI: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY
ATE WARRANT ISSUED: P.D.

WITNESSES:

Det. Tom Deakin #1322
Sgt. John McCrady #415
Det. Steve Burris #942
Det. Frank Savetz #1176
St. Louis County P.D.

150816

81 JAN -6 PM 4:49

State of Missouri
County of St. Louis } SS COUNT IV: INDICTMENT

The Grand Jurors for the State of Missouri, now here in Court duly empaneled, sworn and charged to inquire within and for the body of the County of St. Louis, and State aforesaid, upon their oath present and charge that in the County of St. Louis and State of Missouri, on or about the xxxxxxxx day of xxxxxxxxxxxxxxxxxx 19xxxx, the defendant(s) did wilfully, unlawfully and feloniously ACTING WITH ANOTHER,

in violation of Section 565.001, R.S. Mo., committed the class A felony of capital murder, punishable upon conviction under Section 565.008.1, R.S. Mo., in that, on or about October 29, 1980, before the hour of 6:00 A.M., at 1650 Melrose, Glencoe, in the County of St. Louis, State of Missouri, the defendant acting with another unlawfully, knowingly, with premeditation caused the death of Lottie Will shooting her on or about October 29, 1980, in the County of St. Louis, State of Missouri, thereby causing her to die on or about October 29, 1980, in the County of St. Louis, State of Missouri.

150816

contrary to Missouri Revised Statutes in such case made and provided, against the peace and dignity, of the State.

A TRUE BILL NO TRUE BILL

Foreman Foreman Pros. Atty.

No. JANUARY Term, 19 81 Bail None

ORIGINAL INDICTMENT Circuit Judge, St. Louis County

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[redacted] Mineral Point, Missouri 63660 [redacted] County P.D. 80-60715

CHARGE: CT. I: CAPITAL MURDER - CLASS A FELONY
CT. II: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY — Rev. Mo. Stat. 565.001
AFFIANT: CT. III: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY — 565.003
CT. IV: CAPITAL MURDER - CLASS A FELONY
DATE WARRANT ISSUED: CT. V: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY
CT. VI: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY
WITNESSES:

Det. Tom Deakin #1322
Sgt. John McCrady #415
Det. Steve Burris #942
Det. Frank Savetz #1176
St. Louis County P.D.

150816

81 FEB 6 P 1:49

BY [illegible] CLERK

COUNT V: IN THE ALTERNATIVE TO COUNT IV:

State of Missouri
County of St. Louis } SS COUNT V: INDICTMENT

The Grand Jurors for the State of Missouri, now here in Court, duly empaneled, sworn and charged to inquire within and for the body of the County of St. Louis, and State aforesaid, upon their oath present and charge that in the County of St. Louis and State of Missouri, on or about the [redacted] day of [redacted], the defendant(s) did willfully, unlawfully and feloniously ACTING WITH ANOTHER,

in violation of Section 565.003, R.S. Mo., committed the class A felony of murder in the first degree, punishable upon conviction under Section 565.008.2, R.S. Mo., in that, on or about October 29, 1980, before the hour of 6:00 A.M., at 1650 Melrose, Glencoe, in the County of St. Louis, State of Missouri, the defendant acting wi another, unlawfully caused the death of Lottie Williams, by shooting h on or about October 29, 1980, in the County of St. Louis, State of Missouri, thereby causing her to die on or about October 29, 1980, in the County of St. Louis, State of Missouri, and such killing was committed in the perpetration of the felony of robbery on or about October 29, 1980, in violation of Section 569.030, R.S. Mo., when defendant acting with another forcibly stole a shotgun and U.S. Currency, from Lottie Williams, which said property was in the possess or charge of Clarence and Lottie Williams.

150816

contrary to Missouri Revised Statutes in such case made and provided, against the peace and dignity, of the State.

A TRUE BILL — NO TRUE BILL

Bernard Locke — Foreman — Foreman — Pros. Atty.

No. _____ JANUARY Term, 19 81 Bail $ [illegible]

Mineral Point, Missouri 63660 80-60715

HARGE: CT. I: CAPITAL MURDER - CLASS A FELONY Rev. Mo. Stat. 565.001
CT. II: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY 565.003
FFIANT: CT. III: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY
CT. IV: CAPITAL MURDER - CLASS A FELONY
ATE WARRANT ISSUED: CT. V: MURDER: FIRST DEGREE IN ROBBERY - CLASS A FELONY
CT. VI: MURDER: FIRST DEGREE IN ARSON - CLASS A FELONY
ITNESSES:

150816

Det. Tom Deakin #1322
Sgt. John McCrady #415
Det. Steve Burris #942
Det. Frank Savetz #1176
St. Louis County P.D.

'81 FEB -6 P1:49

COUNT VI: IN THE ALTERNATIVE TO COUNT'S. IV & V:

State of Missouri
County of St. Louis } SS COUNT VI: INDICTMENT

The Grand Jurors for the State of Missouri, now here in Court, duly empaneled, sworn and charged to inquire within and for the body of the County of St. Louis, and State aforesaid, upon their oath present and charge that in the County of St. Louis and State of Missouri, [illegible] the defendant(s) [illegible] ACTING WITH ANOTHER,

in violation of Section 565.003, R.S. Mo., committed the class A felony of murder in the first degree, punishable upon conviction under Section 565.008.2, R.S. Mo., in that, on or about October 29, 1980, before the hour of 6:00 A.M., at 1650 Melrose, Glencoe, in the County of St. Louis, State of Missouri, the defendant acting with another, unlawfully caused the death of Lottie Williams, by shooting her on or about October 29, 1980, in the County of St. Louis, State of Missouri, thereby causing her to die on or about October 29, 1980, in the County of St. Louis, State of Missouri, and such killing was committed in the perpetration of the felony of arson on or about October 29, 1980, in violation of Section 569.050, R.S. Mo., when defendant acting with another knowingly damaged an inhabitable structure located at 1650 Melrose, Glencoe, in the County of St. Louis State of Missouri.

and it is further charged that the offenses in Count's I, II and III were part of a Common Scheme or plan with the offenses in Count's IV; V and VI.

150816

(PAGE SIX OF SIX)

contrary to Missouri Revised Statutes in such case made and provided, against the peace and dignity, of the State.

A TRUE BILL — NO TRUE BILL

Foreman — Foreman — Pros. Atty.

No. _____ JANUARY Term, 19 81 Bail None

Circuit Judge, St. Louis County

ORIGINAL INDICTMENT

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be the shooter in this case under the Florida case that we talked about before the trial started.

I would make a general objection at this point to all the instructions that the Court is about to give and I believe the Judge would grant me leave to object generally again to those instructions that were given at the guilt phase and in which I would like to make more specific under Supreme Court Rules in my Motion for New Trial to both sets of instructions.

I would object to any introduction of any prior conviction on the part of defendant in that they are not properly certified and there's no certification on any of the documents and I would object to any reading of any of the specifics in any of the changes and I would ask the Court to direct the State to just read the conviction, the reason for the conviction and the date and the sentence much like any Court would have before it, or much like if the defendant took the stand he could only be impeached by that and not the specifics of each crime.

I would object further to the inclusion in the aggravating circumstances as to the March 19th and April capital murder convictions that this defendant has in that these are findings of guilty by a jury. These are presently on appeal. They are not final judgments. The Supreme Court on direct appeal has not yet acted on either and as such are not convic-

tions under the present state of the law, that being introduced against defendant in aggravation. Further, these are irrelevant in that these prior two occasions did not find and did not assess the defendant the death penalty.

I would further like to make other objections perhaps more specific at the motion -- in my motion for New Trial that I will file within the time limit.

That's all I have, Judge.

MR. GOLDMAN: Judge, let me put on the record before we go out to the jury I would like to have these particular exhibits which he's referred to marked and submitted for the Court's approval. They include those certified copies of, properly certified copies of Judgment and Sentences showing that Leonard Laws was convicted in 1971 in Arizona and received five years for Armed Robbery on two different cases. There's two priors to that effect. These are the certified copies which I wouldn't want to read to the jury any more than what's in the certified copies. Don't believe there are any details of the crimes in them. The third exhibit would be a certified copy of Judgment and Sentence showing Laws was convicted in 1974, sentenced to eleven years for aggravated assault in Mississippi and attached to that pleading in the case which gives no more details other than he caused serious bodily injury to the name of the person. That would be another conviction. The last two items he's mentioned,

STATE'S PRESENTENCE OPENING STATEMENT

MR. GOLDMAN: Ladies and gentlemen, what I'm going to introduce to you in the second stage is evidence of the defendant's prior criminal history. Simply that. Hopefully, after you've heard that you will be in a much better position than you were to assess the punishment in this case. Thank you.

THE COURT: Mr. Devereux, did you wish to make an opening statement?

MR. DEVEREUX: No, sir.

STATE'S PRESENTENCE EVIDENCE

MR. GOLDMAN: Judge, I would move at this time, then, that State's Exhibits 93, 94, 95, 96 and 97 be admitted into evidence.

MR. DEVEREUX: Your Honor, may I renew my objections made previously to those.

THE COURT: Yes. Noting Mr. Devereux's previous objections, they are overruled and those items will be admitted in evidence.

[State's Exhibits 93 to 97 received in evidence]

MR. GOLDMAN: And I would ask leave of Court at this time to read portions identifying these documents, Your Honor.

THE COURT: You may proceed.

MR. GOLDMAN: State's Exhibit 93 is a certified copy

of Judgment and Sentence showing that Leonard Marvin Laws pled guilty to the crime of armed robbery, a felony, committed on or about the 12th day of August, 1971, in the Superios Court of the State of Arizona, in and for the County of Pima, and that it was adjudged he would receive punishment in the state prison in Florence, Arizona, for a term of not less than five years and not more than six years; this sentence to run concurrent with another armed robbery conviction. That other armed robbery conviction is set out in State's Exhibit 94 which is a certified copy of Judgment and Sentence showing that Leonard Marvin Laws was charged by Information; that on April 16, 1971, he committed an armed robbery in Arizona, and, on his plea of guilty he was sentenced to five years, not more than six years, to run concurrent with the armed robbery conviction in State's Exhibit 93, and the date of this, of course, is November 1971.

State's Exhibit 95, the certified copy of Judgment and Sentence showing that on November 25 of 1974, the defendant was convicted of the crime of aggravated assault in Hinds County, Mississippi, upon the body of one Narcissus Evonne Barton by wilfully, unlawfully and feloniously causing that girl bodily injury, knowingly and recklessly manifesting extreme indifference to the value of human life. On that sentence he was given eleven years in the Mississippi State Penitentiary.

State's Exhibit 96. It is a certified copy showing

that Leonard Marvin Laws, on the charge of Capital Murder, on March 10th of 1982: we, the jury, find the defendant, Leonard Marvin Laws, guilty of Capital Murder, and, having found defendant guilty of capital murder of Elizabeth Roderique, fix punishment at imprisonment for life, Department of Corrections, without eligibility for parole until defendant has served a minimum of fifty years of his sentence; said sentence to run consecutive to St. Louis County cause 449,765.

State's Exhibit 97: certified copy of Judgment and Sentence showing that on January 23rd, '81, Leonard Marvin Laws after entering his plea of not guilty; however, on January 23rd, '81, defendant was found guilty by a jury of the offense charged, Capital Murder, a Felony, committed on October 8 of 1980, and was sentenced to life without parole for fifty years. Thank you.

Rest, Your Honor.

STATE RESTS PRESENTENCE EVIDENCE

THE COURT: Mr. Devereux, did you wish to present any evidence?

MR. DEVEREUX: No, Your Honor.

PRESENTENCE EVIDENCE RESTS

THE COURT: Jurors, you will now hear this, this is Instruction 26.

[The Court gives Instruction MAI-CR 2d 15.36, No. 26].

THE COURT: Mr. Goldman, you ready to proceed with

COUNTY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Plaintiff,	)	CAUSE NO. 450816
	)	
v.	)	DIVISION NO. 3
	)	
LEONARD M. LAWS,	)	
	)	
Defendant.	)	

MOTION IN LIMINE

Comes now defendant by and through his court appointed attorney and moves this Honorable Court for an Order In Limine directing the State of Missouri through its prosecutor and agents to advise any and all witnesses called on behalf of the State in the above cause that those witnesses are not to testify or allude to any other murders committed by this defendant that are not the subject of the instant cause. Such testimony is proof of other crimes, prejudicial and irrelvant to any issue before the court or the jury in the above cause.

Respectfully submitted,

Timothy F. Devereux

TIMOTHY F. DEVEREUX #26707
Attorney for Defendant
201 S. Central, Suite 218
Clayton, Mo. 63105
726-6500

CERTIFICATE OF SERVICE

I hereby certify that I hand delivered a copy of the above Motion In Limine to Assistant prosecuting Attorney Goldman, 7900 Carondelet, Clayton, Mo. 63105, this/___day of July, 1982.

Timothy F. Devereux

TIMOTHY F. DEVEREUX
Attorney for Defendant Laws

Filed 7/20/82

STATE OF MISSOURI,)
) CAUSE NO. 450816
Plaintiff,)
)
v.) DIVISION NO. 14
)
LEONARD LAWS,)
)
Defendant.)

MOTION TO STRIKE THE STATE'S NOTICE OF EVIDENCE IN AGGRAVATION

Comes now, defendant, by his attorney, and moves the Co to strike the State's "Notice of Evidence in Aggravation" for the following reasons:

1. Missouri's capital murder statute (Section 565.001, et seq.) is unconstitutional for the reasons set forth in defenda Motions to Quash and Dismiss the Indictment in the above-captione cause, and incorporated by reference herein.

2. The statute on which the indictment or information based, 565.001, et. seq., is violative of the Eighth and Fourteen Amendments of the United States Constitution and of Article I, Section 21 of the Missouri Constitution in that Section 565.012.2 through (10), R.S.Mo., are arbitrary and irrational classificatio in light of the deterrent effect intended by the Legislature in promulgating said statute.

3. The aggravating circumstances set forth in the Stat "Notice of Evidence in Aggravation" are unconstitutionally broad and unconstitutionally vague and susceptible of widely differing interpretations, thus creating a substantial risk that the death penalty will be capriciously arbitrarily and discriminatorily imposed in this case.

"aggravating circumstances" it intends to rely, thereby denying defendant notice required by 565.006, R.S.Mo., and denying the defendant the opportunity to prepare his case so as to afford him due process of law.

6. The State's "Notice of Evidence in Aggravation" does not afford defendant notice of the specific witnesses the State intends to call regarding so-called "evidence of aggravation" and does not provide defendant with the addresses of those witnesses and thereby denies defendant an opportunity to prepare his defense in accordance with due process of law.

7. The State's "Notice of Evidence in Aggravation" does not afford defendant notice of the specific evidence the State intends to offer to prove so-called "aggravating circumstances" and therefore does not conform to 565.006, R.S.Mo., and therefore is invalid and should be held for naught.

8. Defendant further moves to strike paragraph 1 of the State's "Notice of Evidence in Aggravation" on the ground that the State's evidence, viewed in a light most favorable to the State, is insufficient as a matter of law for the trier of fact to find any of the aggravating circumstances enumerated therein.

9. The use of the "Notice of Evidence in Aggravation" constitutes an attempt by the State to raise the charge from one punishable by life imprisonment without eligibility for parole for a least fifty (50) years to one punishable by death. The indictmen or information filed in this case did not charge such a capital offense. It is a violation of defendant's rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 2, 10, and 17 of the Missouri Constitution t

and "Further Notice of Evidence [illegible]

10. To deny this Motion would constitute a denial of defendant's right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and under Article I, Section 10 of the Missouri Constitution, as well as a violation of his right to equal protection of the law, as guarante by the Fourteenth Amendment to the United States Constitution and Article I, Section 2, of the Missouri Constitution.

WHEREFORE, for the foregoing reasons, defendant moves th Court to strike the State's "Notice of Evidence in Aggravation".

Respectfully submitted,

Timothy F. Devereux

TIMOTHY F. DEVEREUX, #26707
Attorney for Defendant
201 S. Central, Suite 218
Clayton, Mo., 63105
726-6500

Copy of the foregoing mailed this 16th day of July, 1982, to the Prosecuting Attorney's Office, 7900 Carondelet, Clayton, Missouri, 63105, by the undersigned.

Timothy F. Devereux
Timothy F. Devereux

ORIGINAL

IN THE SUPREME COURT FOR THE UNITED STATES

STATE OF MISSOURI,
Respondent,
vs.
LEONARD MARVIN LAWS,
Appellant.

Cause No. 83-6625

MOTION TO PROCEED IN FORMA PAUPERIS

Comes now Leonard Marvin Laws, appellant herein named, by and through his attorney, Rick Sindel, Assistant Special Public Defender for the Office of the Special Public Defender, 21st. and 22nd. Judicial Circuits for the State of Missouri, and shows to the Court that appellant desires to petition this Court by Writ of Certiorari and that the appellant is unable to do so because he is indigent and is unable to afford to pay court, transcript, or travel costs.

WHEREFORE, appellant prays the court to enter an order authorizing an appeal as a poor person and therein provide all court, transcript, and travel without cost to the appellant.

Respectfully submitted,

OFFICE OF SPECIAL PUBLIC DEFENDER

Rick Sindel
Member of Bar
United States Supreme Court

and

Kathryn Shubik
Assistant Special Public Defender

Attorneys for Appellant

83-6625

On Petition for Writ of Certiorari to the Supreme Court of Missouri

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Leonard Marvin Laws, being first duly sworn, depose and say that I am the petitioner in the above-entitled case; that in support of my motion for leave to proceed in forma pauperis, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitlted to redress, and that there is merit to the issues raised in my petition for writ of certiorari.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is no, state the date of your last employment and the amount of salary and wages per month which you received.

Answer: NO

2. Have you received, within the past twelve months, any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

Answer: NO

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

Answer: NO

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

Answer: NO

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Answer: NONE

I understand that a false statement or answer to my questions in this affidavit will subject me to penalties for perjury.

Leonard M Laws c/s/a
Leonard Marvin Laws

Subscribed and sworn to before me this _____ day of MAR 26 1984, 1984.

Notary Public

JACK JONES
NOTARY PUBLIC STATE OF MISSOURI
MONITEAU CO.
MY COMMISSION EXPIRES JAN 25 1987

83-6625

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

LEONARD MARVIN LAWS,

Petitioner,

vs.

STATE OF MISSOURI,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

TO THE MISSOURI SUPREME COURT

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION

JOHN ASHCROFT
Attorney General of Missouri

JOHN M. MORRIS III
Assistant Attorney General

P.O. Box 899
Jefferson City, MO 65102
(314) 751-8767

Attorneys for Respondent

I N D E X

TABLE OF AUTHORITIES

Cases Cited

Statutes Cited

STATEMENT OF THE CASE

Petitioner Leonard Marvin Laws was convicted of two counts of capital murder, § 565.001, RSMo 1978, and received two sentences of death for the murder of an elderly couple, Clarence and Lottie Williams, committed for the purpose of stealing their car and household possessions. The facts relating to this offense are fully set out in the opinion of the Supreme Court of Missouri affirming petitioner's conviction and sentence, State v. Laws, 661 S.W.2d 526, 528-529 (Mo. banc 1983), and will not be restated here.

The facts and circumstances bearing upon petitioner's present claim are as follows: under § 565.006.2, RSMo 1979 Supp., "[o]nly such evidence in aggravation as the prosecution has made known to the defendant prior to his trial shall be admissible" in the punishment phase of a bifurcated capital trial. On May 13, 1981, three months after petitioner had been charged by indictment with the above two counts of capital murder, the state filed and served upon petitioner its Notice of Evidence in Aggravation (Petitioner's Appendix, hereinafter "Pet.App.," E-2). A notice of additional aggravating evidence was filed on September 4, 1981, (Pet. App. E-3). After these notices had been filed, it was discovered that the indictment issued against petitioner was technically defective in that it failed to allege an essential element of capital murder, that the killings were committed with deliberation. See State v. Gilmore, 650 S.W.2d 627 (Mo. banc 1983). As a result, a second indictment was obtained against petitioner on February 9, 1982, alleging exactly the same offenses and including the word "deliberately" (Pet.App. E-4). Following this indictment, petitioner made no claim that the previous notices of aggravating evidence were somehow invalid because of the dismissal of the original indictment. To the contrary, he filed a Motion to Strike the State's Notice of Evidence in

Aggravation three days before trial in which he addressed the contents of the state's notices and claimed that they were insufficiently specific under § 565.006.2 (Pet.App. E-8).

At no time during petitioner's trial, or in the Motion for New Trial filed after his conviction, was it contended that the state's notices of evidence in aggravation were rendered invalid because of the subsequent filing of a second indictment against petitioner. When this theory was advanced for the first time on appeal before the Supreme Court of Missouri, petitioner's argument was that the notices were "nullities" and thus failed to comply with § 565.006.2 because of the defective indictment, and not that petitioner's federal constitutional rights were violated in any fashion. Accordingly, petitioner's current "equal protection" theory has never been presented to any Missouri court.

ARGUMENT

Petitioner's claim is that he received no pretrial notice of the evidence to be submitted in aggravation of the offense during the punishment phase of trial, in violation of § 565.006.2, RSMo 1979 Supp., and that this violated his Fourteenth Amendment right to equal protection of the laws. An initial difficulty with this theory is that it was never presented to any state court.[1] As this Court has observed,

> "It is a long-settled rule that the jurisdiction of this Court to re-examine the final judgment of a state court can arise only if the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system" (citations omitted). Webb v. Webb, 451 U.S. 493, 496-497 (1981).

See also Sandstrom v. Montana, 442 U.S. 510, 527 (1979).

In any event, petitioner's theory is both factually and legally bankrupt. It is preposterous for petitioner to assert that he had "no notice" of the aggravating evidence to be introduced at the punishment phase of trial when he did in fact have such notice and evidenced his full awareness of this fact by filing a challenge to its legal sufficiency three days before trial. As the Missouri Supreme Court pointed out,

> "The purpose of the notice of aggravating circumstances is just what the title implies -- to give notice. Defense counsel, by moving to strike the notice which was filed, show that they were aware of the claimed aggravating circumstances." State v. Laws, 661 S.W.2d 526, 531 (Mo. banc 1983).

---

[1] Although this could be demonstrated by production of the state court records and briefs, it is also manifest from the fact that the present theory was not addressed in the opinion of the Missouri Supreme Court. Where "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary" (citations omitted). Street v. New York, 394 U.S. 576, 582 (1969).

Even ignoring this fact, respondent is mystified as to the attempted application of the Equal Protection Clause to the claim at bar. *Petitioner has not even attempted to allege* that the purported "absence" of notice was the result of invidious discrimination on the basis of race, sex, national origin, indigency, or any other category, "suspect" or otherwise -- rather, he simply states that he did not receive a proper notice. Such an assertion clearly fails to state any "equal protection" violation. See Mlikotin v. City of Los Angeles, 643 F.2d 652, 653 (9th Cir. 1981) for similar facts. For these reasons, the petition at bar presents no issue worthy of review by this Court.

CONCLUSION

In view of the foregoing, the respondent submits that petitioner's petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN ASHCROFT
Attorney General of Missouri

JOHN M. MORRIS III
Assistant Attorney General

P.O. Box 899
Jefferson City, MO 65102
(314) 751-8767

Attorneys for Respondent